APPENDIX

APPENDIX A.

State of Tennessee,
vs. } No. 8767.
Leo Crumley.

In the Circuit Court of Marion County, Tennessee.

Indictment for Burglary in 3rd Degree.

Guilty of Burglary in 3rd Degree.

Came the Attorney General who prosecutes for the State and the defendant in proper person and by Attorney Jerome Ables and said defendant being arraigned upon the indictment, pleads (not) guilty to the same; and it appearing to the Court that the defendant has heretofore seasonably made a motion to be allowed to waive his right to a trial by jury and to submit this case to the trial judge for decision both as to guilt and punishment, pursuant to the provisions of Sections 40-2504 and 40-2708, T. C. A., which said motion was concurred in by the District Attorney General and granted by the Court and attested by the defendant and his attorney and spread upon the minutes of the Court. The Court thereupon proceeded to hear all of the evidence and argument of counsel and after due consideration found the defendant guilty of Burglary in 3rd degree, as charged in the indictment and fixed his punishment at imprisonment in the State Penitentiary for (not more than) three years. It Is, Therefore, Ordered and Adjudged that said defendant, Leo Crumley, for the offense aforesaid, be sentenced to the Penitentiary for an indeterminate sentence of not less than 3 years nor more than 3 years according to the rules and regulations thereof. (Further ordered that the defendant be infamous and be disqualified to exercise the elective franchise. Having been

convicted of a felony other than manslaughter, as aforesaid, it is Ordered that said defendant is also disqualified from holding any office under this State. Defendant will pay the costs of this prosecution for which execution will issue. The Clerk will furnish a certified copy of the indictment in this case and a certified copy of this judgment for the Warden of the Penitentiary to be delivered with said defendant; and defendant is allowed credit for 2 days spent in jail in connection with this case.

The defendant, through his Attorney, gave notice of the filing of a motion for a new trial and is allowed 30 days from the entry of this judgment within which to prepare and file said motion, pending which his bail bond is fixed at the sum of $3,000.00.

APPENDIX B.

State of Tennessee,
vs. } No. 8768.
Leo Crumley.

In the Circuit Court of Marion County, Tennessee.

Indictment for Carrying Burglarious Instruments.

Guilty of Carrying Burglarious Instruments.

Came the Attorney General who prosecutes for the State and the defendant in proper person and by Employed Attorney, Jerome Ables, and said defendant being arraigned upon the indictment, pleads (not) guilty to the same; and it appearing to the Court that the defendant has heretofore seasonably made a motion to be allowed to waive his right to a trial by jury and to submit this case to the trial judge for decision both as to guilt and punishment, pursuant to the provisions of Sections 40-2504 and 40-2708, T. C. A., which said motion was concurred in by the District Attorney General and granted by the Court and attested by the defendant and his attorney and spread upon the minutes of the Court. The Court thereupon proceeded to hear all of the evidence and argument of counsel and after due consideration found the defendant guilty of Carrying Burglarious Instruments as charged in the indictment and fixed his (her) punishment at imprisonment in the State Penitentiary for (not more than) three years. It Is, Therefore, Ordered and Adjudged that said defendant, Leo Crumley, for the offense aforesaid, be sentenced to the Penitentiary for an indeterminate sentence of not less than One year nor more than 3 years, according to the rules and regulations thereof. Further ordered that the defendant be infamous and be disqualified to exercise the

elective franchise. Having been convicted of a felony other than manslaughter, as aforesaid, it is Ordered that said defendant is also disqualified from holding any office under this State. Defendant will pay the costs of this prosecution for which execution will issue. The Clerk will furnish a certified copy of the indictment in this case and a certified copy of this judgment for the Warden of the Penitentiary to be delivered with said defendant; and defendant is allowed credit for 2 days spent in jail in connection with this case.

The defendant, through his Attorney, gave notice of the filing of a motion for a new trial and is allowed 30 days from the entry of this judgment within which to prepare and file said motion, pending which his bail bond is fixed at the sum of $2,000.00.

APPENDIX C.

IN THE COURT OF CRIMINAL APPEALS,
NASHVILLE, TENNESSEE,
MARION COUNTY.

Leo Crumley, v. State of Tennessee.	Offense: No. 8767—Burglary, 3rd, No. 8768—Carrying Burglarious Instruments.

Petition to Rehear Granted; Judgment Heretofore Entered Set Aside; Judgments of Trial Court Affirmed.

Judgment.

This cause coming on further to be heard on a petition to rehear filed by the State of Tennessee, and reply thereto filed on behalf of the plaintiff in error, Leo Crumley; and on consideration thereof, this Court is of opinion that the conflict in the record should be resolved by application of the rule that the bill of exceptions prevails over the minute entries when they are in conflict, and is, therefore, constrained to grant the petition to rehear and set aside the judgment heretofore entered; and it is accordingly so ordered and adjudged by this Court.

Upon further consideration of the entire record in this cause, this Court is of opinion that there is no reversible error on the record and that the judgments of the Court below should be affirmed.

It is, therefore, ordered and adjudged by this Court that the plaintiff in error, Leo Crumley, for his offense of burglary in the third degree, Case No. 8767, be delivered to the Warden of the Penitentiary, or his agent, and be

by him committed to the Penitentiary of the State of Tennessee, and there confined at hard labor for a term of not less than three years nor more than three years, commencing on the date of his reception at said Penitentiary; and that the plaintiff in error be rendered infamous and disqualified from holding any office under this State or exercising the elective franchise.

It is further ordered and adjudged by this Court that the plaintiff in error, Leo Crumley, for his offense of carrying burglarious instruments, Case No. 8768, be delivered to the Warden of the Penitentiary, or his agent, and be by him committed to the Penitentiary of the State of Tennessee, and there confined at hard labor for a term of not less than one year nor more than three years, commencing on the date of his reception at said Penitentiary; and that the plaintiff in error be rendered infamous and disqualified from holding any office under this State or exercising the elective franchise.

The sentences of imprisonment will be credited with the time the plaintiff in error spent in jail pending this appeal. The number of days of such confinement in each case will be certified to the Warden by the Clerk of the Court below.

The plaintiff in error will pay the costs accrued in this Court and in the Court below, and execution may issue from this Court for the costs of the appeal. A procedendo will issue to the Circuit Court of Marion County directing that Court to proceed with the collection of the costs of the case accrued in Case No. 8767 and Case No. 8768 in the manner provided by law.

The Clerk of this Court will issue a duly certified copy of this judgment to the Sheriff of Marion County, which will be his authority for delivering the plaintiff in error to the Warden or his agent; and also a duly cer-

tified copy hereof to the Warden of the Penitentiary, who will at once proceed to execute this judgment.

In the event the plaintiff in error files a petition for certiorari in the Tennessee Supreme Court, he may be admitted to bail on bond in the penalty of $4,000.00 for his appearance in the Supreme Court; and in default of such bond, he will be remanded to the Sheriff of Marion County.

APPENDIX D.

SUPREME COURT, NASHVILLE,
MARION COUNTY.

Leo Crumley,
v.
State of Tennessee.
(No. 8767 and No. 8768.)

Upon consideration of the petition for a writ of certiorari herein to the Court of Criminal Appeals, Middle Division at Nashville, the said petition is hereby denied.

The Clerk of this Court will issue duly certified copies of this Order to the Clerk of the Circuit Court of Marion County, the Sheriff of Marion County and the Warden of the State Penitentiary.

APPENDIX E.

EXCERPT FROM TRANSCRIPT.

[18] Q. Now, when you arrested Mr. Crumley in the culvert, is that located in the direction of—One moment please. Mr. Lee Beene just walked in the court room, is he subject to the rule your Honor?

The Court: Well, he's the prosecutor. Are you trying two (2) cases or one (1)?

Mr. Kildgore: Is he the prosecutor in this case, General?

General Templeton: Yes. Two (2).

Mr. Kildgore: Will you please come around here Mr. Beene.

Mr. Ables: Your Honor, is Mr. Beene the prosecutor?

The Court: They say he is, I don't know. We're trying two (2) cases.

Mr. Ables: I object to that, he's been in the court room.

The Court: No, he just come in, just walked in there now. What is he, a prosecutor?

Mr. Kildgore: Yes, he is, Your Honor, one of the prosecutors.

The Court: All right, in one (1) of the cases.

Mr. Kildgore: He's the prosecutor in possessing burglary tools and Jeff Payne is the prosecutor in the burglary case.

Mr. Ables: I want to object to Mr. Beene being in [19] here now.

The Court: Well, we're trying them both together, he has a right to be in here if he's a party, trying both cases together here. Go ahead.

Mr. Kildgore: Now, the place where you found Mr. Crumley is that located in the direction which he had run?

A. Yes, sir, almost in a straight line.

Q. From Jeff Payne's place? A. Yes, sir.

Q. You say you took Mr. Crumley to the hospital? A. Yes, sir, we did.

Q. And after you returned from the hospital where did you take him? A. To the City Jail.

Q. City Jail. When you took him to the hospital were you present when he was examined? A. Yes, I was.

Q. And, did a doctor examine him? A. No, sir, they was a nurse examined him.

Q. Did you assist in this examination? A. Well, I——

Mr. Ables: (Interposing) Your Honor, I object to whether he assisted in it or not. I don't think Mr. Bynum can testify——

The Court: (Interposing) Well, let's find out what [20] he's going to testify to. He just asked him if he assisted in it, he could have pulled his shoes off or undone his——

Mr. Ables: (Interposing) Let's go a little bit further.

The Court: Well, let's wait till he goes a little bit further.

Mr. Ables: About Mr. Beene being in here. They've got as witnesses Jeff Payne and William Bynum.

The Court: Well, if he's not a prosecutor he'll have to get outside.

Mr. Ables: David Lee Beene and William Bynum, on both of these copies of the indictment, they've got David Lee Beene.

The Court: Well, David Lee Beene, that's him.

Mr. Ables: Yes, sir, as witnesses.

The Court: They've got a prosecutor out here as David Lee Beene, prosecutor.

Mr. Ables: And also as a witness, Your Honor.

The Court: Well of course, he's going to be a witness, Jeff Payne is also a prosecutor and he's also a witness, he was the witness that went before the Grand Jury.

Mr. Ables: We object to Lee Beene being——

The Court: (Interposing) You've got a right to object. The law gives you that right.

Mr. Ables: Note our exceptions, Your Honor.

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